

REMARKS

This responds to the Office Action mailed on July 13, 2009.

Claim 12 is amended; no claims are cancelled or are added; as a result, claims 1-4, 6-10 and 12-26 remain pending in this application.

Claim Objections

Claim 12 was objected to as depending on a cancelled claim. Claim 12 has been amended and it is submitted this rejection has been overcome.

§ 103 Rejection of the Claims

Claims 1-4, 6-10, 12-15, and 19-20 were rejected under 35 U.S.C. § 103(a) as being obvious over Coutts (U.S. 6,311,165) and Russell (U.S. Publication No. 2005/0021839).

Claims 16 and 17 were rejected under 35 U.S.C. § 103(a) as being obvious over Coutts and Russell as applied to claim 10, and further in view of Vasilik (U.S. 5,515,081).

Claim 18 was rejected under 35 U.S.C. § 103(a) as being obvious over Coutts, Russell and Vasilik as applied to claim 16, and further in view of Suman et al. (U.S. 5,717,387; hereinafter "Suman").

Claims 21-24 and 26 were rejected under 35 U.S.C. § 103(a) as being obvious over Coutts and Russell as applied to claim 1, and further in view of Buswell et al. (U.S. 5,918,039; hereinafter "Buswell").

Claim 25 was rejected under 35 U.S.C. § 103(a) as being obvious over Coutts, Russell and Buswell as applied to claim 24, and further in view of Vasilik.

The Applicant respectfully traverses and submits that the claimed subject matter is not obvious in view of the applied references.

In *KSR International Co. v. Teleflex Inc. et al.* (U.S. 2007), the determination of obviousness under 35 U.S.C. § 103 is a legal conclusion based on factual evidence.¹ The legal

¹ See *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 7, 1336-37 (Fed. Cir. 2005).

conclusion, that a claim is obvious within § 103(a), depends on at least four underlying factual issues set forth in *Graham v. John Deere Co. of Kansas City*²: (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations.

Therefore, **the test for obviousness under §103 must take into consideration the invention as a whole.**³ The Examiner must, as one of the inquiries pertinent to any obviousness inquiry under 35 U.S.C. §103, recognize and consider not only the similarities but also the critical differences between the claimed invention and the prior art.⁴

KSR v. Teleflex provides a tripartite test to evaluate obviousness. “A rationale to support a conclusion that a claim would have been obvious is that *all the claimed elements were known* in the prior art and one skilled in the art could have combined the elements as claimed by known methods *with no change in their respective functions*, and *the combination would have yielded nothing more than predictable results* to one of ordinary skill in the art.”⁵

The Applicant submits that neither Coutts nor Russell, whether taken singularly in combination, teach all the limitations of claims 1, 10, 22 and 24.

For example, neither Coutts nor Russell teach the following limitation of claim 1:

the controller being re-initialized by the terminal OS to control the overall operation of the network terminal and being a programmable logic chip instead of a microprocessor or central processing unit (CPU) ...

The Office Action concedes that Coutts does not describe “a controller... implemented by a programmable logic chip instead of a processor.” However, the Office Action then submits

² 383 U.S. 1, 17 (1966).

³ See MPEP 2141.02 I, citing, *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983) .

⁴ See *In re Bond*, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990), reh'g denied, 1990 U.S. App. LEXIS 19971 (Fed. Cir.1990).

⁵See *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007)). Emphasis added.

that the “programmable logic controller” described in Russell in paragraph [0005] teaches this limitation. Applicant disagrees and submits that the limitation of “a controller... being a programmable logic chip instead of a microprocessor or central processing unit (CPU)” as claimed in the context of claim 1 is not described or suggested in Russell.

Paragraph [0005] of Russell reads as follows:

[0005] In the prior art, as shown in FIG. 1, the interface to a piece of industrial equipment 2 is often divided into two parts. The first part is the local human machine interface (HMI) 4. This HMI 4 typically consists of a computer (not shown) or other controller along with a touch screen (not shown). The touch screen may be replaced with simple buttons depending on the application. The HMI 4 is connected directly to a programmable logic controller (PLC) 6 typically in the equipment 2, through use of a serial interface such as RS232, for example. During operation, the HMI 4 periodically requests the state of the machine from the controller 6, and displays this data in a predetermined format on its screen (not shown).

Clearly the programmable logic controller (PLC) 6 is separate from the computer (see HMI 4) and in no way whatsoever forms part of a network terminal with the limitations of claim 1. The standalone functionality of the PLC 16 is clearly evident from FIG. 2 where the PC (THIN CLIENT) 20 is shown connected to the PLC 16 via a network (see paragraph [00025], also cited in the Office Action). Combining the programmable logic controller (PLC) 6 with the computer (HMI 4) would still not describe the limitation of “the controller being re-initialized by the terminal OS to control the overall operation of the network terminal and being a programmable logic chip instead of a microprocessor or central processing unit (CPU)” as there would still be a microprocessor or central processing unit present in the HMI 4.

Further, even if *arguendo* the PLC 6 was used to replace the processor in the computer of Coutts or Russell, which is strongly denied, there would be a substantial change in functionality of the PLC 6. Paragraph [00025] provides further details on the PLC 6 described with reference to FIG.2. “Each piece of industrial equipment 15 includes a PLC 16 with a Web server 18, and a thin client PC 20 with a Web browser 22 as previously mentioned. The controller 16 is

responsible for the local control of the equipment 15, and may take the form of a computer rather than a programmable logic controller (PLC) 16, as shown.”

Clearly, the PLC described in Russell controls industrial equipment and does not in any way describe the limitation of “controller being re-initialized by the terminal OS to control the overall operation of the network terminal and being a programmable logic chip instead of a microprocessor or central processing unit (CPU)” as required by claim 1.

In view of the above it is submitted that claim 1 is allowable. Claims 2-4 and 6-9 are allowable at least by virtue of their dependency on claim 1.

Claims 10, 22 and 24 include a substantially similar limitation to “the controller being re-initialized by the terminal OS to control the overall operation of the network terminal and being a programmable logic chip instead of a microprocessor or central processing unit (CPU)”. Accordingly, in view of the remarks above it is also submitted that claims 10, 22 and 24 are allowable. Claims 12-21, 23 and 25-26 are also allowable at least by virtue of their respective dependency on claims 10, 22 and 24.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (408) 278-4041 to facilitate prosecution of this application.

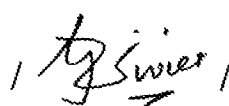
If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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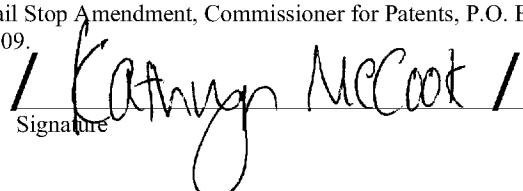
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By


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Kathryn McCook
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